

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Revision of the Commission's Rules to Ensure)	
Compatibility with Enhanced 911 Emergency)	CC Docket No. 94-102
Calling Systems)	
)	
Emery Telecommunications & Video, Inc.)	
Petition for Waiver of Sections 20.18(e))	
of the Commission's Rules)	

To: Chief, Wireless Telecommunications Bureau

PETITION FOR WAIVER

Emery Telecommunications & Video, Inc. ("Emery") pursuant to Section 1.3 and 1.925 of the Commission's Rules,¹ hereby requests waiver of the Phase II Enhanced 911 ("E911") obligations set forth in Section 20.18 of the Commission's Rules.² Waiver is warranted due to the fact that the underlying purpose of the Rule would be frustrated by application to Emery and grant of the waiver would be in the public interest. To further the public interest, Emery proposes a specific deployment schedule based upon representations made by handset-based solution vendors.

Background

Emery is the licensee of stations WPOK951 and WPOK952 in the Broadband Personal Communications Service (PCS). Station WPOK951 covers Delta, Montrose and Ouray Counties,

¹ 47 C.F.R. §§ 1.3 and 1.925.

² 47 C.F.R. § 20.18.

Colorado and Grand County, Utah, while station WPOK952 covers Carbon and Emery Counties, Utah, as well as two additional areas defined only by multiple sets of geographical coordinates. Emery utilizes San Isabel Telecom, Inc.'s Lucent CDMA switch pursuant to a management agreement between the companies.³ To date, Emery has not received a Phase I or a Phase II request from a PSAP that is capable of receiving and utilizing the data elements and has a mechanism in place for recovering the PSAP's costs.

Waiver is Warranted

The standard for grant of a waiver of the Commission's Rules is that "the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest."⁴ Emery's waiver request meets these standards.

The Underlying Purpose of the Commission's E911 Rule Would be Frustrated by Application to the Instant Case

Grant of the requested waiver is in the public interest. The requested deadline extension will afford Emery the additional time needed to upgrade and test its equipment, once the equipment is available, in an orderly manner that is likely to lead to a successful result in providing Phase II service. A waiver will not adversely affect the PSAPs in the area or the public served. Emery has received no PSAP requests for Phase II service; and it is believed that none of the

³ San Isabel filed a petition requesting waiver of the Phase II E911 obligations on October 1, 2001.

⁴ 47 C.F.R. § 1.925(b)(3)(i).

PSAPs in the area served by Emery will be ready for Phase I service for at least another six months or longer. Accordingly, no delay will result from grant of the temporary waiver herein requested. The modest extension of time herein requested will prejudice neither PSAPs, Emery's subscribers, nor the general public.

A strict application of the Commission's Phase II E911 implementation requirements would frustrate the underlying purpose of the FCC's E911 Rules by jeopardizing the provision of service through imposition of financially burdensome and technically infeasible requirements. The FCC adopted its E911 Rules with the goal of "stimulat[ing] the application of wireless technology to improv[e] emergency 911 systems."⁵ The Commission recognized that this goal could not be accomplished without "research, testing and development requiring coordinated efforts by public safety organizations, wireless carriers, location technology vendors and equipment manufacturers."⁶ Due to concerns expressed by the carriers, vendors and manufacturers regarding the technical and financial feasibility of implementing E911 services, the FCC adopted a phased-in approach that is "rigorous without being impossible or commercially self-defeating."⁷

⁵ *In the Matter of Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems: Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442, 17458 (2000) ("Fourth MO&O").

⁶ *Id.*

⁷ *In the Matter of Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems: Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 18676, 18707 (1996) ("R&O"). See *Notice of Proposed Rulemaking*, 9 FCC Rcd 6170, 6178 (1994) (FCC proposed a phased-in approach due to concerns about "technical and financial feasibility expressed by manufacturers and communications service providers").

Further, the Commission provided for waivers of its Rule in situations in which it is not economically or technologically feasible for a carrier to meet the phased-in deployment timetable.⁸

Imposition of a Network-Based E911 Phase II Solution is Not Technically or Financially Feasible for Emery

To date, Emery has not received a Phase II request from a PSAP that is capable of receiving and utilizing the data elements and has a mechanism in place for recovering the PSAP's costs. Accordingly, Emery is not currently required to provide a network-based Phase II E911 solution. However, because handset-based technologies will not be available for CDMA systems (see discussion below), Emery, in conjunction with San Isabel, has investigated utilizing a network-based solution in the event a request is made. This investigation has revealed that network-based solutions are not financially feasible. Without the ability to spread the high costs of a network-based solution over a large subscriber base, the cost of deploying a network-based solution would in any event, be prohibitively expensive.⁹

⁸ See, e.g., R&O at 18718 (noting that there may be exceptional circumstances where deployment of E911 may not be technically or economically feasible within the timetable allowed and stating that these cases can be dealt with through individual waivers); *U.S. Cellular, et.al. v. FCC*, Case No. 00-1072, D.C. Cir., FCC Brief at 33 ("If a small or rural carrier can show that, in fact, it is uniquely disadvantaged by the technological or economic demands imposed on it by the FCC's E911 implementation schedule, the waiver procedure is available for it to seek appropriate individualized relief").

⁹ See, e.g., the Phase II Implementation Report for North Carolina RSA 3 Cellular Telephone Company, Inc. dba Carolina West Wireless filed November 9, 2000 containing information regarding Grayson Wireless' network-based solution and estimating that the cost of deployment of Grayson's solution is estimated to be approximately \$25,000 per cell site plus a \$65,000 central control system. The Commission has previously cited United States Cellular Corporation's estimate that it would cost about \$90 million to upgrade its more than 2,500 cell sites to employ TruePosition's network-based solution, i.e., approximately \$36,000 per cell site.

Imposition of the Commission's Implementation Schedule for a Handset-Based Solution is Not Technically Feasible for Emery

To require Emery to sell ALI-capable handsets to new customers according to the FCC's timetable would frustrate the FCC's goal that the imposition of E911 requirements be technically feasible. Emery has not been able to identify any location technology vendors or equipment manufacturers that currently produce ALI-capable phones for CDMA systems. Accordingly, Emery cannot meet the FCC's handset-based implementation schedule.

According to Alltel's Waiver Request, none of the major handset manufacturers will have GPS-capable handsets available for commercial availability until 2002.¹⁰ Samsung has indicated that it will manufacture GPS-capable handsets in the near future; however, it requires a minimum order of 5000, an amount far in excess of Emery's projected new activations.

Waiver Would be in the Public Interest

Emery is not requesting a blanket waiver of the Commission's E911 Phase II requirements but rather requests waiver only to the extent that these requirements cannot be accomplished in a technically or economically feasible way. Accordingly, Emery seeks an extension of the deadline to allow it to implement a handset solution in the most efficient and expeditious manner.

Based upon the representations made by manufacturers in Alltel's Waiver Request, Emery

¹⁰ See Alltel Communications Petition for Waiver of Sections 20.18(e) and (g) of the Commission's Rules filed July 25, 2001 at 17 ("Alltel's Waiver Request") at 14 noting that the following manufacturers will have GPS-capable handsets available for commercial availability as of the respective dates: Audiovox - January 2002; Kyocera - June 2002; Motorola - September 2002; Nokia - December 2002.

seeks a waiver for a nine-month deferral of each of the penetration benchmarks in Section 20.18(g)(1)(i)-(iv).¹¹ Emery does not seek relief from the requirement that by December 31, 2005, carriers must reach 95% penetration of ALI-capable handsets in their total subscriber bases. Such an extension would allow time for manufacturers to complete development and fully test handset solutions for CDMA systems. To begin selling and activating the phones on a shorter timetable would be a disservice to the public interest as phones that had not been properly tested would be sold to consumers as soon as the manufacturers make them available in order to meet Commission-imposed deadlines.

Conclusion


Because implementation of the FCC's E911 Phase II implementation requirements are neither technically nor financially feasible, Emery requests a waiver of the requirements. The requested waiver would allow for a nine-month deferral of each of the penetration benchmarks required for carriers that choose handset-based solutions. Such a wavier would be in the public

¹¹ *See, e.g.,* Alltel's Waiver Request at 22. FCC rules require carriers that choose handset-based solutions to meet the following implementation schedule: October 1, 2001 - Carriers must begin selling and activating ALI-capable handsets; December 31, 2001 - Carriers must ensure that at least 25% of all new handsets activated are ALI-capable; June 30, 2002 - Carriers must ensure that at least 50% of all new handsets activated are ALI-capable; December 31, 2002 - Carriers must

interest as it would allow time for manufacturers of CDMA handsets to fully develop the solutions and test the phones before they are sold to Emery subscribers.

Respectfully submitted,

EMERY TELECOMMUNICATIONS & VIDEO, INC.

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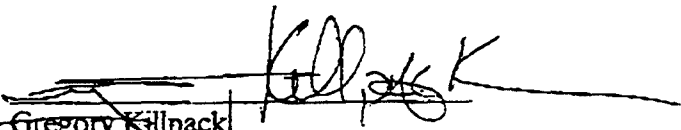
Dated: November 30, 2001

ensure that at least 100% of all new digital handsets activated are ALI-capable.

DECLARATION

Gregory Killpack, hereby declares, under penalty of perjury, under the laws of the United States, that he is General Manager of Emery Telecommunications & Video, Inc., that he has read the foregoing Petition for Waiver to the Federal Communications Commission; and that, except for those facts of which the Commission may take official notice, all of the facts stated therein are true and correct to the best of his knowledge, information and belief..

Dated, this 29 day of November, 2001.



Gregory Killpack
General Manager
Emery Telecommunications & Video, Inc.